

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

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FIREMAN'S FUND INSURANCE COMPANY a/s/o
TRANSMAR COMMODITY GROUP LTD.,

Plaintiff,

Case No.

v.

COMPLAINT

UNITED COCOA PROCESSORS, INC.,

Defendant (s).

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Plaintiff Fireman's Fund Insurance Company a/s/o TRANSMAR Commodity
Group Ltd., by its attorneys, Graham, Miller, Neandross, Mullin & Roonan, LLC.,
complaining of the defendant, states:

PARTIES

1. At all times hereinafter mentioned, plaintiff is a corporation duly existing as an
insurance company under the laws of the State of California, with its principal place of
business located at 777 San Marin Drive, Novato, California 94998.

2. At all times hereinafter mentioned, plaintiff is subrogated to all right, title and
interest of any claim Transmar Commodity Group Ltd. has against the defendant United
cocoa Processor, Inc., as a result of its payment of \$237,311.50 to under a policy of
insurance issued by the plaintiff to the its insured.

3. Upon information and belief, at all time hereinafter mentioned, defendant
United Cocoa Processor, Inc. is a corporation duly existing under the laws of the State of
Delaware, with its principal place of business located at 701 Pencader Drive, Newark,
Delaware 19702.

JURISDICTION

4. This Court has jurisdiction over this action under 28 U.S.C. 1332 since there is diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00.

FIRST CAUSE OF ACTION

5. On or before December 2, 2005, Transmar delivered into defendant's possession, in good order and condition, various quantities of cocoa product for storage and processing at a facility located at 701 Pencader Drive, Newark, Delaware.

6. On December 2, 2005, there was a fire in defendant's facility, which caused damage to Transmar's cocoa in the amount of \$237,311.50, an amount which was paid by the plaintiff to Transmar.

7. The fire which damaged the cocoa was the sole result of defendant's negligence and neither plaintiff or Transmar was comparatively negligent.

8. As a result of defendant's negligence, plaintiff suffered a loss of \$237,311.50.

SECOND CAUSE OF ACTION

9. Plaintiff repeats and reiterates each and every allegation contained in the First Cause of Action with the same force and effect as if herein set forth anew.

10. The damage to the cocoa was the sole result of defendant's breach of a contract in bailment and at law.

11. As a result of defendant's breach of contract, plaintiff suffered a loss of \$237,311.50.

WHEREFORE, plaintiff respectfully requests a judgment in favor of the plaintiff against the defendant in the sum of \$237,311.50, with interest from December 2, 2005,

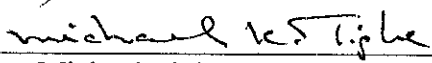
plus costs, expenses, attorneys' fees and such other relief which the Court deems just and proper.

DATED: December 29, 2006
New York, New York

GRAHAM, MILLER, NEANDROSS,
MULLIN & ROONAN, LLC.
Attorneys for the Plaintiff
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By 
William Mullin (WM-5318)

TIGHE & COTTRELL, P.A.
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By 
Michael Tighe

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Fireman's Fund Insurance Company and Transmar Commodity Group, Ltd. DEFENDANTS United Cocoa Processor, Inc.

(b) County of Residence of First Listed Plaintiff Marin, Ca.
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant New Castle, De.
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number) Graham, Miller Neandross, Mullin & Roonan, LLC, 2350 Broadway, New York 10024 (212)-877-4486 Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|--|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | PTF <input checked="" type="checkbox"/> 2 DEF <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3 | Foreign Nation | PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input checked="" type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Negligence28 U.S.C. 1332

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

237,311.50

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1/5/07

SIGNATURE OF ATTORNEY OF RECORD

William Mullin

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 07 - 014

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

2007 JAN -9 PM 4:23

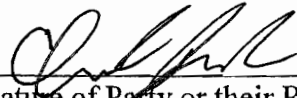
FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE

RG
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I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

JAN 09 2007

(Date forms issued)



(Signature of Party or their Representative)

Charles Joseph

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action